

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID CZAPIEWSKI,

Plaintiff,

v.

JOHN DOE M.D. AND WARDEN BRIAN FOSTER,

Defendants.

ORDER

19-cv-438-bbc

Pro se plaintiff David Czapiewski, who is incarcerated at Green Bay Correctional Institution, is proceeding on an Eighth Amendment claim against defendant John Doe MD, a physician at Waupun Correctional Institution. (Warden Brian Foster is included as a nominal defendant solely for the purposes of accomplishing service and conducting discovery regarding the identify of defendant John Doe M.D.) Before the court is defendants' motion to dismiss this case for lack of venue, or in the alternative, to transfer it to the Eastern District of Wisconsin on the ground that all of the parties reside in the Eastern District and plaintiff's allegations concern events that took place in the Eastern District. Dkt. #18 (citing 28 U.S.C. § 1406(a) ("The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.")). Plaintiff filed a response opposing dismissal, but stating that transfer would be appropriate. Dkt. #20. He then filed a motion to withdraw his opposition brief and requested additional time to respond to defendants' motion. Dkt. #21. He states that his case is not frivolous

and that he needs more time to consider defendants' motion.

However, plaintiff does not need additional time to respond to the transfer motion because it is clear from the parties' submissions that venue is proper only in the Eastern District of Wisconsin. Venue is proper where defendants reside or where the events giving rise to the claim took place, both of which are the Eastern District in this case. 28 U.S.C. § 1391(b). Further, I conclude that transfer, rather than dismissal, is in the interests of justice. Accordingly, I will grant defendant's motion and will transfer this case to the Eastern District of Wisconsin.

ORDER

IT IS ORDERED that

1. Plaintiff David Czapiewski's motion to withdraw his response and for an extension of time, dkt. #21, is DENIED.

2. Defendants Brian Foster and John Doe MD's motion to transfer this case to the Eastern District of Wisconsin, dkt. #18, is GRANTED. This case is TRANSFERRED to the United States District Court for the Eastern District of Wisconsin.

Entered this 3d day of October, 2019.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge